

Exhibit G

In The Matter Of:

Texas Eastern v.

0.77 a Acres

COPY

Daniel Gans

Vol. 2

June 23, 2015

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Texas Eastern v.
0.77 a Acres

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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL ACTION NO. 14-67 (SRC) (CLW)

4 -----
5 TEXAS EASTERN TRANSMISSION, :
6 LP, a Limited Partnership :
7 of the State of Delaware, :
8 :
9 Plaintiff, :
10 :
11 v. :
12 :
13 0.77 a ACRES OF LAND, MORE :
14 OR LESS, IN THE CITY OF :
15 JERSEY CITY, HUDSON COUNTY, :
16 NEW JERSEY, COLES JERSEY :
17 DEVELOPMENT, CO., LLC, OGDEN :
18 REALTY, CO., JANE AND JOHN :
19 DOES 1 through 50 (fictitious :
20 name defendants) and ABC :
21 BUSINESS ENTITIES 1 through :
22 50, (fictitious name :
23 defendants), :
24 :
25 Defendants. :

16 T R A N S C R I P T of the stenographic
17 notes of RENEE RUSSO, CCR, CRCR, RPR, CRR, a
18 Certified Court Reporter and Notary Public of the
19 State of New Jersey, Certificate No. XI00143700
20 held at the offices of DECOTIIS, FITZPATRICK, &
21 COLE, 500 Frank W. Burr Boulevard, Teaneck, New
22 Jersey, on Tuesday, June 23, 2015, commencing
23 10:06 a.m.
24
25

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1 INDEX

2 PAGE

3 WITNESS: DANIEL GANS

4 CONTINUED DIRECT EXAMINATION BY MR. ASH 186

5

6 EXHIBITS

NO.	DESCRIPTION	PAGE
8 DG-16	Purchase and Sale Agreement bates stamped DG00359-385, 27 pages	188
10 DG-17	Letter dated 4/19/13 bates stamped DG00386-387, two pages	203
12 DG-18	Spreadsheet, bates stamped DG00388-389, two pages	205
13 DG-19	Memorandum From Gans and Vallone To Menin, dated 6/19/13, bates stamped Ackman 00006-00009, four pages	217
15 DG-20	Memorandum e-mail From Vallone To Menin, dated 6/30/13, bates stamped Ackman 00013-14, two pages	219
18 DG-21	E-mail From Gans To Vallone, cc Menin, dated 6/30/13, bates stamped Ackman 00015-17, two pages	223
21 DG-22	E-mail From Gans To Menin, cc Vallone, dated 6/30/13, bates stamped Ackman 00018-20, three pages	228
23 DG-23	Memorandum From Gans To Ackman dated 7/1/13, bates stamped DG00390-397, eight pages	230

24
25

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1 A P P E A R A N C E S:

2 DeCOTIIS, FITZPATRICK & COLE, LLP
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5 Teaneck, New Jersey 07666
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10 Transmission, LP
11

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17 christopher.dalton@bipc.com
18 Counsel for Witness, Daniel Gans
19

20 ALSO PRESENT:

21 Joseph DeCotiis, Jr.
22
23
24
25

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1 EXHIBITS Continued

NO.	DESCRIPTION	PAGE
3 DG-24	E-mail From Gans To Menin, Goldman, dated 7/1/13 bates stamped Ackman 00021; E-mail From Vallone To Ackman dated 7/1/13, bates stamped Ackman 00022; E-mail From Ash To Gans, cc Simmons, dated 7/1/13 bates stamped Ackman 00023-24, four pages	234
8 DG-25	Documents bates stamped Ackman 00034-35, two pages	240
10 DG-26	E-mail From Vallone To Colletta, Ackman, cc Gans, dated 7/1/13, bates stamped Ackman 00037-38, two pages	247
12 DG-27	E-mail dated 7/1/13 bates stamped Ackman 00041-43, three pages	250
14 DG-28	E-mail From Ackman To Colletta, dated 7/1/13, bates stamped Ackman 00044	253
16 DG-29	E-mail From Gans To Ackman dated 7/3/13, bates stamped Ackman 00175	257

24
25

<p>Gans, Daniel - direct - Ash Page 185</p> <p>1 DANIEL GANS, 67 Jefferson Street, 2 Hoboken, New Jersey, 07030, having been first 3 duly sworn, was examined and testified as 4 follows: 5 6 CONTINUED DIRECT EXAMINATION BY MR. ASH: 7 Q. Good morning, Mr. Gans. Welcome 8 back. As you're aware, my name is Michael Ash. 9 I'm an attorney at the firm DeCotiis, Fitzpatrick 10 and Cole. As you are also aware, we represent 11 the plaintiff, Texas Eastern Transmission, LP. 12 I'm joined this morning by Joe DeCotiis, Jr. 13 This is a continuation of your 14 deposition in this matter that started on 15 February 12, 2015. Is that your recollection? 16 A. Yes. 17 Q. Okay. I'm just going to go over the 18 ground rules briefly, more for Mr. DeCotiis' 19 benefit than yours. You've been deposed before, 20 right? 21 A. Yes, I have. 22 Q. You understand that even though we 23 are in the informal setting of a conference room 24 in my office, that the testimony you are giving 25 today is sworn and has the same effect as if you</p>	<p>Gans, Daniel - direct - Ash Page 187</p> <p>1 I had asked for certain documents you identified 2 in your responses that would have been responsive 3 to discovery requests, but had not yet been 4 produced. 5 I want to start out this morning by 6 looking at one of those documents, and let's mark 7 this. We'll continue from February, March so 8 we'll start with DG-16. 9 (Exhibit DG-16 was received and 10 marked for identification by the court reporter.) 11 Q. Okay. You've been handed a document 12 that's bates stamped DG 359 through 385. We've 13 marked it DG-16 this morning. If you could just 14 take a look through that, and would you confirm 15 for me whether this is a complete copy of the 16 Purchase and Sale agreement between Ogden Realty 17 Company and the Hoboken Brownstone Company? 18 A. Yes, I believe this is a full copy 19 of the Purchase and Sale agreement. 20 Q. Okay. On the cover of the agreement 21 there's a notation that the Hoboken Brownstone 22 Company is a registered trade name of West Bank 23 Realty, Inc. Do you see that? 24 A. Yes. 25 Q. And that also tracks on the first</p>
<p>Gans, Daniel - direct - Ash Page 186</p> <p>1 were testifying before a judge and jury? 2 A. Yes, I do. 3 Q. All right. You, if you can, please 4 answer audibly, so the court reporter can 5 memorialize your response. Shaking of your head 6 or a gesture is not a sufficient response. 7 Have you taken any medications or 8 substances this morning that would impair your 9 ability to comprehend or respond to my questions? 10 A. No, I have not. 11 Q. Okay. Thank you. If you do not 12 understand a question, please say so and I will 13 try to rephrase the question. If Mr. Dalton, who 14 is here to defend your deposition, objects to a 15 question, please wait to respond until we discuss 16 the basis of that objection, and you will be 17 directed to respond or not depending on our 18 colloquy. 19 If you need a break, just let me 20 know. I don't think we'll be too long this 21 morning, and I think we've covered all of it? 22 A. Thank you. I understand. 23 Q. Okay. This deposition, as I've 24 indicated, is a continuation of your deposition 25 from February 12, 2015. During that questioning</p>	<p>Gans, Daniel - direct - Ash Page 188</p> <p>1 page of the agreement? 2 A. Correct. 3 Q. What is the entity, West Bank 4 Realty, Inc.? 5 A. It's a realty company that my 6 partner, George Vallone, and I set up many years 7 ago. 8 Q. You're a member of that entity? 9 A. Yes, I am. 10 Q. How is that entity set up? It's a 11 corporation? 12 A. Yes, it is. 13 Q. So there are shares of that 14 corporation? 15 A. Yes. 16 Q. Who are the shareholders of that 17 corporation? 18 A. George Vallone and Daniel Gans. 19 Q. And how many shares do you have? 20 A. It's a 50 percent partnership. 21 Q. So the Hoboken Brownstone Company, 22 is that a separate legal entity or is it a trade 23 name? 24 A. It's a trade name, dba. 25 Q. So there is no legal entity, Hoboken</p>

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1 Brownstone Company?
2 A. That's correct, it's a dba.
3 Q. And do you use Hoboken Brownstone
4 Company as the trade name for various entities
5 under your control?
6 A. Yes.
7 Q. How many entities would you say?
8 How many -- strike that.
9 How many different legal entities do
10 you control or own shares in that you have used
11 Hoboken Brownstone Company as a trade name?
12 A. It would be a little bit of a guess
13 for me to answer. I wouldn't be 100 percent
14 sure.
15 Q. Well, qualifying your answer that it
16 is an estimate, would you be able to estimate?
17 A. Yes.
18 Q. How many entities, that are within
19 your control or in which you are a member or own
20 shares, would you estimate that you use Hoboken
21 Brownstone Company as a trade name?
22 A. Two or three.
23 Q. What entities are you referring to
24 when you're thinking of the two or three entities
25 that Hoboken Brownstone has been used as a

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1 trading name or a doing business as name?
2 A. Hoboken Project Management is the
3 one that comes up to mind, and I don't know,
4 there are other pieces of that, if we have
5 another account, so.
6 Q. You're a member of an entity called
7 Coles Jersey Development Company, LLC, correct?
8 A. Correct.
9 Q. And have you ever used the Hoboken
10 Brownstone Company as a trade name for the legal
11 entity, Coles Jersey Development Company, LLC?
12 A. Not to my knowledge, we never did
13 that, no.
14 Q. The Purchase and Sale agreement, if
15 you look at the page, first page of the agreement
16 marked DG 361, the identification of property
17 within the Purchase and Sale agreement in Section
18 1.2, that does not include what is now known as
19 Block 6005, a portion of Lot 7, correct?
20 A. Without looking exactly what these
21 include, I don't know from looking at this what
22 Block 6005 and the lots are, you know, what are
23 represented here, just from looking at this.
24 Q. Do you recall the street address for
25 Block 6005?

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1 A. It's Block 367, 305 Coles Street.
2 Q. That's the address for your current
3 office, correct?
4 A. Right.
5 Q. And the trailers you have are set up
6 on Block 6005?
7 A. That's correct.
8 Q. And the document identifies 305 Cole
9 Street, Block 367, you understand to be the
10 former tax designation for Block 6005?
11 A. That's correct.
12 Q. Do you have an understanding as to
13 what Lot 8.2 refers to?
14 A. Not without referring to a diagram.
15 I would need to look at a diagram.
16 Q. Okay. If we go to Section 3.6 in
17 the agreement?
18 A. I'm just going to grab some glasses,
19 make my life easier. 3.6.
20 Q. Section 3.6, it says, "Survey"?
21 A. Right.
22 Q. Have you reviewed the entire
23 agreement?
24 MR. DALTON: Do you mean today or
25 previously?

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1 Q. Previously?
2 A. No.
3 Q. Are you familiar with or have you
4 ever reviewed Section 3.6 in this agreement?
5 A. Not specifically, not in depth, no.
6 Q. Okay. If we look at the last
7 sentence on that page marked 364, it says:
8 "As to Lot A.02 in Block 367, mislocated fencing,
9 a guard house extending into the bed of 17th
10 Street, storage containers and a paved parking
11 area over the northerly property line, utility
12 poles with a light and transformer and overhead
13 wires over the westerly and northerly portion of
14 the premises and the approximate location State
15 claim line over the southerly westerly easterly
16 portions of the premises."
17 Do you know what the "approximate
18 location" of "State claim line" refers to as to
19 Block 367?
20 A. No.
21 Q. Do you know if that refers to a New
22 Jersey tidelands claim on Block 367?
23 A. I don't believe it does.
24 Q. What is the basis for your belief
25 that this paragraph does not refer to a New

<p>Gans, Daniel - direct - Ash Page 193</p> <p>1 Jersey tideland claim on Block 367?</p> <p>2 A. There was a tideland claim on 6004.</p> <p>3 Is that 367, 6004? Can I go back to the front</p> <p>4 here?</p> <p>5 Q. Yeah, please.</p> <p>6 A. Just to give myself some knowledge</p> <p>7 again. My only statement there is that Block 366</p> <p>8 did have a tidelands claim on it and Block 367</p> <p>9 did not.</p> <p>10 Q. Have you applied to the New Jersey</p> <p>11 Tidelands Council for a license or a grant as to</p> <p>12 any open tidelands claims on any of the</p> <p>13 properties purchased from Ogden Realty Company?</p> <p>14 A. Yes.</p> <p>15 Q. What is the current status of the</p> <p>16 application for a license or a grant?</p> <p>17 A. It's been granted.</p> <p>18 Q. You've received a grant and not a</p> <p>19 license for open tidelands claims?</p> <p>20 A. I believe we received a grant. I'm</p> <p>21 not 100 percent knowledgeable about the</p> <p>22 difference between a license and a grant.</p> <p>23 Q. Do you recall the compensation paid</p> <p>24 for that grant?</p> <p>25 A. Approximately.</p>	<p>Gans, Daniel - direct - Ash Page 195</p> <p>1 portions of Block 6005?</p> <p>2 A. I do not recall that, no.</p> <p>3 Q. In the February 12th deposition I</p> <p>4 had asked for a copy of that report and an</p> <p>5 objection was made because it did not pertain to</p> <p>6 Block 6005, and I just want to understand that</p> <p>7 that was based on a review of the report?</p> <p>8 MR. DALTON: The report addressed</p> <p>9 Block 6004, not 6005, which is the piece of</p> <p>10 property at issue right now.</p> <p>11 MR. ASH: Okay.</p> <p>12 Q. Are you aware of NJDEP through</p> <p>13 Tidelands Council had conducted or ordered their</p> <p>14 own appraisal of the claimed area on Block 6004?</p> <p>15 A. I have no knowledge of that.</p> <p>16 Q. If we continue through Section 3.6</p> <p>17 on the page marked DG 365, there's a specific</p> <p>18 exception to the pending condemnation for</p> <p>19 permanent and temporary easements by Texas</p> <p>20 Eastern on Block 6005?</p> <p>21 MR. DALTON: I'm going to make an</p> <p>22 objection because it doesn't refer to it as 6005</p> <p>23 in this document.</p> <p>24 MR. ASH: Your objection is noted.</p> <p>25 Q. The document refers to Block 367,</p>
<p>Gans, Daniel - direct - Ash Page 194</p> <p>1 Q. What was the approximate</p> <p>2 compensation for the grant?</p> <p>3 A. \$64,000.</p> <p>4 Q. And to the best of your recollection</p> <p>5 that grant only includes property on Block 6004?</p> <p>6 A. That's correct.</p> <p>7 Q. How did -- strike that.</p> <p>8 As part of your grant application</p> <p>9 into New Jersey Tidelands Council, did you offer</p> <p>10 the amount of \$64,000 as compensation?</p> <p>11 A. It came through, that number came</p> <p>12 through the process of applying for it. I'm not</p> <p>13 sure how we came up with that number exactly, how</p> <p>14 they came up with that number.</p> <p>15 Q. Is the \$64,000 compensation</p> <p>16 supported by an appraisal?</p> <p>17 A. Yes, there was an appraisal done.</p> <p>18 Q. And that was an appraisal done at</p> <p>19 your request or at Coles Jersey's request?</p> <p>20 A. It was for Coles Jersey request.</p> <p>21 Q. And that was prepared by Otteau</p> <p>22 Valuation Company?</p> <p>23 A. That's correct.</p> <p>24 Q. Do you recall if the appraisal</p> <p>25 prepared by Otteau Valuation Company included</p>	<p>Gans, Daniel - direct - Ash Page 196</p> <p>1 Lot 8.2. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. So you were aware at the time that</p> <p>4 you signed this Purchase and Sale agreement, that</p> <p>5 you were acquiring the property subject to Texas</p> <p>6 Eastern's condemnation of permanent and temporary</p> <p>7 easements?</p> <p>8 MR. DALTON: Objection to form. I</p> <p>9 don't believe that Mr. Gans signed this document.</p> <p>10 Q. The document was signed as Hoboken</p> <p>11 Brownstone Company as the buyer?</p> <p>12 A. Correct.</p> <p>13 Q. And you're a 50 percent owner of</p> <p>14 that company, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And as a 50 percent owner of the</p> <p>17 buyer in this Purchase and Sale agreement, were</p> <p>18 you aware that Hoboken Brownstone would be</p> <p>19 purchasing the property identified in the</p> <p>20 Purchase and Sale agreement subject to Texas</p> <p>21 Eastern's permanent and temporary easements?</p> <p>22 A. That's correct.</p> <p>23 Q. If we turn to page DG 368 at, this</p> <p>24 is Section 6.2, Section L, the purchase of the</p> <p>25 property identified in this Purchase and Sale</p>

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1 agreement included certain items to be completed
2 at closing, one of which was an assignment of
3 seller's interest in and to that certain
4 condemnation proceeding identified in Section 3.6
5 and Exhibit B, "including all proceeds thereto as
6 well as any and all rights, benefits and
7 obligations under that certain fee agreement
8 between seller and the law firm of Bathgate,
9 Wegener and Wolf, representing seller in such
10 condemnation proceeding." Do you see that?
11 A. Yes.
12 Q. Was this a point negotiated between
13 Ogden Realty and Hoboken Brownstone?
14 A. Yes.
15 Q. So under the original Purchase and
16 Sale agreement, Ogden Realty was to assign all
17 interest in any condemnation proceeds to Hoboken
18 Brownstone?
19 A. That was not my understanding, no.
20 Q. Are you aware of a separate
21 agreement or an amendment to this agreement that
22 would change the terms of Section 6.2, L in
23 DG-16?
24 A. I don't recall if there was another
25 agreement that defined this a little bit more.

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1 a request right now, you have all the agreements
2 that existed. Certainly the firm, Bathgate,
3 Wegener and Wolf, at one time had a concept in a
4 meeting talked about the disposition of the
5 proceeds that were a little, it sounded to me to
6 be a little bit different than what's written in
7 L. It says, "satisfactory," just seller and
8 buyer.
9 So maybe still there's a little open
10 in this, it seems open, and so that it was
11 defined later and you have those. I believe you
12 have those documents already that came from our
13 discussions with Mr. Wegener from --
14 Q. So it's your understanding that this
15 term in Section 6.2, Section L, was further
16 defined by additional documents between Ogden
17 Realty and Hoboken Brownstone?
18 A. Correct, yeah.
19 Q. Okay. Can we turn to page DG 371?
20 A. Seven.
21 Q. Under Article 7, the title's:
22 "Casualty, semicolon, Condemnation Section 7.1
23 Notice: Prior to the closing the property or any
24 portion thereof is damaged or destroyed by fire
25 or other casualty or if any eminent domain

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1 Q. Are you aware of any conversations
2 or verbal agreements that may not have been
3 formerly memorialized in writing between Ogden
4 Realty Company and Hoboken Brownstone that dealt
5 with the assignment or allocation of condemnation
6 proceeds?
7 A. I do recall that there was some more
8 definition than what is written right here.
9 Q. More definition?
10 A. About the proceeds and who and how
11 the proceeds were allocated.
12 Q. And that "more definition" was
13 expressed in writing or was it communicated
14 verbally?
15 A. I thought it was somewhere in
16 writing, but I don't recall.
17 Q. Okay. To the extent that there was
18 an additional agreement that has not yet been
19 provided or identified, I would ask for a copy of
20 that.
21 MR. DALTON: If there is.
22 MR. ASH: If there is.
23 MR. DALTON: If such an agreement
24 exists.
25 A. My belief is if it hasn't come up in

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1 proceeding beyond that set forth in Section 3.6
2 and Exhibit B herein is commenced or threatened
3 against the property or any portion thereof, the
4 seller shall give prompt written notice thereof
5 to the buyer." Do you see that term?
6 A. Yes.
7 Q. Are you aware of any additional
8 eminent domain proceeding that was threatened
9 against the property during the executory period
10 of this contract?
11 A. Yes, I am aware that there was a
12 threatened, a possible threatened proceeding that
13 might occur.
14 Q. Are you referring specifically to
15 Texas Eastern's attempt to acquire an easement on
16 a portion of Lot 7 and Block 6005 --
17 A. Yes.
18 Q. -- in the spring of 2013?
19 A. Yes, I am.
20 Q. Did the seller, Ogden Realty
21 Company, provide Hoboken Realty, Hoboken
22 Brownstone Realty as the buyer with formal notice
23 of that threatened eminent domain as required in
24 Section 7.1?
25 A. I do not recall that.

<p>Gans, Daniel - direct - Ash Page 201</p> <p>1 Q. Having received some notice of that 2 threatened eminent domain proceeding, Hoboken 3 Brownstone Realty did not elect to terminate the 4 agreement as a remedy in Article 7? 5 A. That is correct. 6 Q. We turn to DG 382, which is Exhibit 7 B, certain permitted exceptions. Item number 8 five identifies as a permitted exception: 9 "Right, title and interest of the State of New 10 Jersey in and to so much of the land described in 11 Schedule A hereof as is now or formerly effected 12 by the ebb and flow of the tide," referring to 13 Block 367, Lot 8.02. Do you see that? 14 A. I see that. 15 Q. Are you aware of a separate 16 application to NJ Tidelands Council that would 17 specifically address what's formerly known as 18 Block 367? 19 A. I am not aware of anything that's 20 been done with that. 21 Q. And, again, at Item number 9, the 22 Texas Eastern condemnation for permanent and 23 temporary easements is identified as a permitted 24 exception? 25 A. Yes, that's correct.</p>	<p>Gans, Daniel - direct - Ash Page 203</p> <p>1 substantial role in assisting assignee with the 2 development of the project on the property." 3 This was a full assignment of Hoboken 4 Brownstone Realty's rights under the Purchase and 5 Sale agreement? 6 A. Yes, it was. 7 Q. The fourth paragraph refers to or 8 anticipates entering into an Assignment and 9 Assumption agreement between original buyer 10 defined as Hoboken Brownstone Company and 11 assignee, who is CH Acquisitions 2, LLC. Do you 12 see that? 13 A. Yes. 14 Q. Was a separate Assignment and 15 Assumption agreement between Hoboken Brownstone 16 Company and CH Acquisitions 2, LLC ever 17 negotiated and executed? 18 A. Was negotiated, I don't recall if it 19 was ever executed. 20 Q. Did the terms of the Assignment and 21 Assumption agreement include a provision in which 22 West Bank Realty, Hoboken Brownstone Company or 23 some affiliated entity of West Bank Realty would 24 receive some equity portion of the ownership 25 entity of the property in the Purchase and Sale</p>
<p>Gans, Daniel - direct - Ash Page 202</p> <p>1 MR. ASH: Okay. Let's mark this 2 DG-17, please? 3 (Exhibit DG-17 was received and 4 marked for identification by the court reporter.) 5 Q. Mr. Gans, please take a minute and 6 review what we've marked DG-17, which is also 7 identified as bates stamp DG 386 and 387. Are 8 you familiar with this document? 9 A. Yes, I am. 10 Q. And what is this document, DG-17? 11 A. This is an assignment of our rights 12 under the contract to Crescent Heights. 13 Q. When you say, "the contract," you're 14 referring to what we've marked DG-16? 15 A. DG-16, correct. 16 Q. Do you know who prepared this 17 document, DG-17? 18 A. I'm not sure. 19 Q. Okay. The second paragraph reads: 20 "At or before the closing of title, assignee," 21 who is identified as "CH Acquisitions 2, LLC, 22 will enter into a Development agreement with an 23 entity to be owned by George Vallone and Daniel 24 Gans identified as the VG entity, by which the VG 25 entity will be engaged by assignee to play a</p>	<p>Gans, Daniel - direct - Ash Page 204</p> <p>1 agreement? 2 A. Yes, I believe it did. 3 Q. Did the Assignment and Assumption 4 agreement specifically identify the Texas Eastern 5 easement condemnations? 6 A. I don't recall. 7 Q. Do you believe you have maintained a 8 copy of the unexecuted Assignment and Assumption 9 agreement? 10 A. I don't recall if I have a copy of 11 it. 12 MR. ASH: To the extent Mr. Gans or 13 Hoboken Brownstone Company has maintained a copy 14 of that draft Assignment and Assumption agreement 15 between Hoboken Brownstone Company and CH 16 Acquisitions 2 LLC, I would ask for a copy of 17 that. 18 MR. DALTON: We'll check the files 19 again. I do believe we produced everything, but 20 we'll check again. 21 MR. ASH: Okay. Thank you. 22 (Exhibit DG-18 was received and 23 marked for identification by the court reporter.) 24 Q. Okay. Can you take a minute, please 25 and review what we've marked DG-18?</p>

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<p>Gans, Daniel - direct - Ash Page 205</p> <p>1 MR. ASH: And just for the record 2 it's identified as bates stamped DG 388 and 389. 3 Q. Mr. Gans, are you familiar with 4 DG-18? 5 A. Yes, I am. 6 Q. DG-18 was produced by counsel in 7 response to my request for an agreement 8 memorializing terms of allocation of Texas 9 Eastern condemnation settlement between Ogden 10 Realty and Hoboken Brownstone Company, CH 11 Acquisitions. Is that an accurate description of 12 this document? 13 A. You say this was produced by the 14 attorneys? 15 MR. DALTON: By us. 16 Q. It was produced to me in response to 17 my request for a copy of the agreement 18 memorializing terms of allocation of Texas 19 Eastern condemnation settlement between Ogden 20 Realty and Hoboken Brownstone, CH Acquisitions? 21 A. That is correct. 22 Q. So is it your understanding that 23 this two-page chart is the full extent of the 24 written agreement between Ogden Realty and 25 Hoboken Brownstone and CH Acquisitions as</p>	<p>Gans, Daniel - direct - Ash Page 207</p> <p>1 that? 2 A. Yes. 3 Q. Is that the final negotiated 4 settlement after the negotiations at the June 5 13th, 2013 settlement meeting between Texas 6 Eastern, Ogden Realty and Hoboken Brownstone? 7 A. Yes, it was. 8 Q. Does that refresh your recollection 9 as to whether this document was created before or 10 after that meeting? 11 A. This was created after that meeting. 12 Q. Let's look at the top of page DG 13 388. There's a separate chart that begins with 14 the column "address." Do you see that chart? 15 A. Yes. 16 Q. What is this chart? 17 A. These are charts of properties that 18 were sold and the cost of those sales, the size 19 of the lots and the density. 20 Q. Who prepared this chart at the top? 21 A. Mr. Vallone and myself. 22 Q. Did anyone contribute to the 23 research of these other transactions? 24 A. I don't recall. 25 Q. Were you working with an appraiser</p>
<p>Gans, Daniel - direct - Ash Page 206</p> <p>1 purchaser for the condemnation settlement 2 proceeds? 3 A. Yes. 4 Q. Okay. Who prepared DG-18? 5 A. George created the spreadsheet. 6 Q. Did you provide input or information 7 to George Vallone in creating DG-18? 8 A. Yes, amongst others. 9 Q. Who would be the "others," to your 10 recollection, that would have contributed 11 information or data to DG-18? 12 A. This was created after our 13 settlement discussion, so the people that were 14 representing the different entities all had input 15 into this. 16 Q. So this document, DG-18, was created 17 after a settlement meeting between Texas Eastern, 18 Ogden Realty and Hoboken Brownstone on or about 19 June 13th, 2013? 20 A. I can't remember if this was right 21 before or after the settlement, I don't recall 22 that. 23 Q. If we look at the first page of the 24 document in the middle of the page it says, 25 "Final settlement equals 3,500,000." Do you see</p>	<p>Gans, Daniel - direct - Ash Page 208</p> <p>1 at the time? 2 A. Not in regard to this matter. 3 Q. Do you recall consulting with an 4 appraiser named John Brody as part of the 5 settlement discussions between Texas Eastern and 6 Ogden Realty? 7 A. I don't. 8 Q. Do you recall any involvement by an 9 appraiser named John Brody during the settlement 10 negotiations between Ogden Realty and Texas 11 Eastern? 12 A. I do not. 13 Q. Was there another appraiser you may 14 have been working with, with regard to these 15 properties that you were purchasing from Ogden 16 Realty in the spring of 2013? 17 A. I don't recall anyone else. 18 Q. Okay. There are certain conclusions 19 at the bottom of the first chart where you have 20 averages of sales price, lot size. There's a 21 column, "PPU." Does that stand for price per 22 unit? 23 A. Correct. 24 Q. And then you have price per acre, is 25 that right?</p>

<p>Gans, Daniel - direct - Ash</p> <p>Page 209</p> <p>1 A. Yes, it is. 2 Q. And then an average density per 3 acre? 4 A. Correct. 5 Q. What were you analyzing in this 6 chart? 7 A. We were making an effort to analyze 8 the cost and value of units on a piece of 9 property and how that related to density. 10 Q. The conclusions in the chart on the 11 top of 300 -- I'm sorry, strike that. 12 \$33,338 per unit and 4,576,792 per 13 acre became the basis for the valuation 14 calculations in the chart under the heading, 15 "permanent easement area valuation based on units 16 lost," correct? 17 A. Correct. 18 Q. How did you determine under 19 permanent easement area valuation based on units 20 lost that 57 units would be lost in the permanent 21 easement area? 22 A. It was based upon the density per 23 acre. 24 Q. So the chart on the top where it 25 says, "Average density of 137," the lost number</p>	<p>Gans, Daniel - direct - Ash</p> <p>Page 211</p> <p>1 value of the Texas Eastern takings. 2 Q. Did you go into the settlement 3 meeting with Texas Eastern with an idea or an 4 amount of compensation to settle the 5 condemnations that was consistent with your 6 calculations on DG-18 of roughly \$3.4 million? 7 A. Yes, we did. 8 Q. So going into that meeting with a 9 demand, whether that was expressed to Texas 10 Eastern or not, of 3.4 million, you ended up 11 doing better at 3.5 million? 12 A. We were only one of the people at 13 the table negotiating. 14 Q. Prior -- 15 A. So I can't say what was acceptable 16 to everybody who was going into the meeting. 17 Q. Was there a discussion between 18 Hoboken Brownstone and Ogden Realty as to what an 19 acceptable settlement would be prior to the June 20 13th, 2013 meeting with Texas Eastern? 21 A. There were discussions. To the best 22 of my knowledge, there was no resolutions prior 23 to the meeting. 24 Q. Were you working with this valuation 25 calculation prior to the June 13th meeting?</p>
<p>Gans, Daniel - direct - Ash</p> <p>Page 210</p> <p>1 of units of 57 is based on .417 acres of the 2 permanent easement area? 3 A. I, just looking at the numbers, I'm 4 not 100 percent sure what the formulas are. 5 Q. We could check that math, right? 6 A. Yup, yup. 7 Q. And it checks out? 8 A. It does, okay. I accept your -- 9 MR. DALTON: I think we could agree 10 that .417 times the 4.576 million per acre works 11 out to 1.908. 12 MR. ASH: Okay. 13 Q. And there's a separate calculation 14 for temporary work space under the permanent 15 easement valuation? 16 A. Correct. 17 Q. And there's a total valuation 18 concluded of \$3,405,214, do you see that? 19 A. Where are you looking? I'm sorry. 20 Q. At the bottom of that chart it says, 21 "bar valuation" equals "3,405,214"? 22 A. Oh, okay. 23 Q. What is the significance of that 24 amount? 25 A. That amount was an estimation of the</p>	<p>Gans, Daniel - direct - Ash</p> <p>Page 212</p> <p>1 A. Yes, we had prepared a document. 2 Q. So the valuation of 3.4 million 3 approximate, that was the target, if you will, 4 for negotiations? 5 A. That was Hoboken Brownstone, Mr. 6 Vallone and my valuation at the time and were 7 presenting that obviously to two parties sitting 8 at the table. 9 Q. Was this document actually produced 10 and discussed at the June 13th, 2013 settlement 11 meeting? 12 A. I don't recall. 13 Q. Do you recall bringing this document 14 with you even if you didn't share it with Texas 15 Eastern? 16 A. Yes, we would have had it with us. 17 Q. And did you discuss this document, 18 DG-18, with or portions of the analysis with 19 Ogden Realty? 20 A. Yes. 21 Q. There's also an allocation for the 22 temporary easement duration between Ogden and 23 Hoboken Brownstone, correct? 24 A. Say that again, please? 25 Q. There's an allocation of the</p>

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1 duration of the temporary easement between Ogden
2 and Hoboken Brownstone?
3 A. Yes.
4 Q. And the allocation was 12 months of
5 a temporary easement to Ogden, six months to
6 Hoboken Brownstone?
7 A. That is correct.
8 Q. Who decided that allocation?
9 A. It was based upon the closing date.
10 Q. Okay. If we go down to the bottom
11 half of the page under, "final settlement" equals
12 "\$3,500,000," under "takings," do you see that
13 column, the first column?
14 A. Yes.
15 Q. The first row says, "corner," do you
16 see that?
17 A. Yes.
18 Q. What does "corner" refer to?
19 A. A small piece of property from Block
20 367.
21 Q. Is that specifically the .077 acre
22 portion of what's now known as Lot 7 on Block
23 6005?
24 A. Yes, it is.
25 Q. And if we go through the chart in

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1 contingent upon permanent easement ri
2 .077 acre portion of Lot 7, Block 6005 in which
3 on DG-18 as the "corner" piece?
4 A. That is correct.
5 Q. At the time you understood the
6 acquisition of permanent easement rights on the
7 .077 acre portion of Lot 7, Block 6005, in which
8 you identify as the corner piece on DG-18, as a
9 material term of the settlement between Texas
10 Eastern, Ogden Realty and Hoboken Brownstone?
11 A. Yes.
12 Q. The compensation for the .077 acre
13 portion of Lot 7, Block 6005 in which you've
14 identified as the corner piece on DG-18 was
15 allocated to Hoboken Brownstone Company amongst
16 the parties?
17 A. That is correct.
18 Q. The entire settlement of \$3,500,000
19 allocated between Hoboken Brownstone and Ogden
20 Realty net of legal fees, proceeds to Hoboken
21 Brownstone totaled \$1,792,394?
22 A. That is correct.
23 Q. The .077 acre portion of Lot 7 in
24 Block 6005 that you've identified as the corner
25 piece on DG-18, as being a material term of the

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1 that row for corner, under "final offer" there's
2 an amount indicated, "\$255,000," do you see that?
3 A. Yes.
4 Q. How was that amount determined?
5 A. It was based on an offer that Texas
6 Eastern had made to Ogden.
7 Q. Is that based on an allocation of
8 the entire settlement amount of 3,500,000 for the
9 permanent easement area?
10 A. Please repeat that question.
11 Q. Is the \$255,000 amount for the
12 corner piece of .077 acres, is that an allocation
13 of the permanent easement compensation of the
14 total 3,500,000 settlement offer?
15 A. Not really in my understanding of
16 the final offer.
17 Q. So how was that \$255,000 amount
18 determined based on the final offer?
19 A. As I mentioned, 255 was the number
20 that Texas Eastern had allocated to this.
21 Certainly, the settlement offer had a lot to do
22 with that property.
23 Q. You say, "The settlement offer had a
24 lot to do with that property." Are you saying
25 that the entire \$3,500,000 settlement was

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1 settlement with Texas Eastern in order to acquire
2 permanent easement rights on that property, do
3 you understand that to be the same .077 acre
4 portion of Block 6005 that is the subject of the
5 instant condemnation?
6 A. Yes, I do.
7 (Discussion off the record.)
8 (Recess is taken.)
9 MR. DALTON: Let's mark that 19,
10 please?
11 (Exhibit DG-19 was received and
12 marked for identification by the court reporter.)
13 (Discussion off the record.)
14 MR. ASH: Back on. Okay.
15 Q. DG-19, are you familiar with this
16 document?
17 A. Yes, I am.
18 Q. And what is this document?
19 A. It's a document that we wrote to
20 Bruce Menin after he told us that he would not
21 close on the property?
22 Q. And why did you prepare this
23 document?
24 A. I prepared this document to try to
25 convince Bruce to, and Crescent Heights to

<p>Gans, Daniel - direct - Ash Page 217</p> <p>1 proceed with us and buy the project. 2 Q. With whom did you share this 3 document? 4 A. Bruce Menin. I don't know if his 5 partner received it or not. 6 Q. Did you share this memo with Bill 7 Ackman? 8 A. Not to my recollection. 9 Q. On Page 2 of this document DG-19 10 under the second section, "Spectra Energy 11 condemnation settlement," there's a reference 12 kind of halfway down the page to the additional 13 3,300 square foot, I'm going to add, portion of 14 the property. Do you see 3,300 square feet? 15 A. Yes, that's on it. 16 Q. Does that refer to the .077 acre 17 portion of Lot 7 and Block 6005? 18 A. Yes, it does. 19 Q. And if we turn the page under number 20 three it says: "Notwithstanding any of that, we 21 tried to convince you yesterday that even if we 22 lost the 3,300 square foot piece, it would cost 23 just \$255,000 of the \$1.79 million credit off the 24 purchase price we had gotten from the Spectra 25 settlement and just 15 units of density on a</p>	<p>Gans, Daniel - direct - Ash Page 219</p> <p>1 document with George Vallone? 2 A. I don't know. I don't recall having 3 been part in preparing this specific document. I 4 certainly spoke to Mr. Vallone, as he noted in 5 the document itself. 6 Q. Do you recall reviewing this 7 document on or about June 30th, 2013? 8 A. I'm sure I was copied on the e-mail 9 and reviewed it. 10 Q. Why was this document prepared? 11 A. To do what we could do to try to 12 continue to work with Crescent Heights and have 13 them close the property. 14 Q. The subject of this memorandum is 15 "Walsh Ogden rescue effort progress since our 16 call this morning." Do you recall June 30th, 17 2013 falling on a Sunday? 18 A. I believe that is correct, yes. 19 Q. Were you on a call with Mr. Menin 20 and Mr. Vallone on June 30th, 2013? 21 A. I was not. 22 Q. Are you aware if a call took place 23 that morning? 24 A. Yes, I am. 25 Q. Do you know who was on that call on</p>
<p>Gans, Daniel - direct - Ash Page 218</p> <p>1 thousand unit project." Do you see that? 2 A. Yes, I do. 3 Q. The \$255,000 cost of the "3,300 4 square foot piece," you're referring to the 5 compensation for the corner piece in DG-18? 6 A. That's correct. 7 Q. And how did you determine that 15 8 units of density would be lost from the 3,300 9 square foot portion? 10 A. The average units per acre 11 calculation. 12 Q. In preparing this memo, it was your 13 understanding that the additional permanent 14 easement area on a portion of Lot 7, Block 6005 15 would result in a loss of 15 units? 16 A. Yes. 17 (Exhibit DG-20 was received and 18 marked for identification by the court reporter.) 19 Q. Mr. Gans, are you familiar with this 20 document, DG-20? 21 A. I'm familiar with it. 22 Q. And what is this document? 23 A. It's a document written by my 24 partner, George Vallone, to Bruce Menin. 25 Q. And did you also prepare this</p>	<p>Gans, Daniel - direct - Ash Page 220</p> <p>1 June 30th, 2013? 2 A. Mr. Vallone, Bruce Menin and Sonny. 3 Q. Who is Sonny? 4 A. Sonny is Bruce's partner. I believe 5 his last name is Sonny Kahn. 6 Q. Do you know what was discussed on 7 the call June 30th, 2013? 8 A. Only the items that are listed on 9 the -- listed by Mr. Vallone as to what was 10 discussed. 11 Q. Based on a statement on Page 2, this 12 memo was prepared on or about 3:00 on June 30th 13 of 2013? 14 A. Yes. 15 Q. If we go back to the first page 16 under number two, the last sentence, it says: 17 "I am confident the Spectra person will be able 18 to educate the title company to the Walsh's 19 ownership of Lot 7. I believe this because 20 Spectra executives were obviously convinced, 21 since they paid an additional 1.4 million to 22 settle their other dispute with Walsh and to gain 23 access to this strip of land." Do you see that? 24 A. Yes, I do. 25 Q. So when it says, "I am confident,"</p>

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<p>Gans, Daniel - direct - Ash Page 221</p> <p>1 that's Mr. Vallone speaking?</p> <p>2 A. That is correct.</p> <p>3 Q. Having read these two statements, is</p> <p>4 that also your belief or would that have been</p> <p>5 your belief as of June 30th, 2013?</p> <p>6 A. Yes.</p> <p>7 Q. And the "strip of land" referred to,</p> <p>8 is it your understanding that that is the .077</p> <p>9 acre portion of Lot 7, Block 6005?</p> <p>10 A. That is correct.</p> <p>11 Q. So it's your understanding that</p> <p>12 gaining access to .077 acre portion of Lot 7,</p> <p>13 Block 6005 in acquiring a permanent easement on</p> <p>14 that portion of Lot 7 was a material term for</p> <p>15 Spectra to settle all of the condemnations</p> <p>16 against the Ogden Realty property?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know if you shared this memo,</p> <p>19 DG-20, with Bill Ackman?</p> <p>20 A. I don't recall this being shared</p> <p>21 with Bill Ackman.</p> <p>22 Q. When you were deposed on February</p> <p>23 12th, 2015, you had described the events of this</p> <p>24 weekend and you noted that Bill Ackman was -- and</p> <p>25 now I'm quoting at Page 80 of the transcript --</p>	<p>Gans, Daniel - direct - Ash Page 223</p> <p>1 You wrote: "Hi, Bruce, we just heard back from</p> <p>2 Ray. His position is that they would allow us to</p> <p>3 close tomorrow if we walk away from our share of</p> <p>4 the condemnation proceeds." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Who is "Ray"?</p> <p>7 A. Ray is one of the partners at the,</p> <p>8 at Ogden.</p> <p>9 Q. What's his name?</p> <p>10 A. I can't recall his last name right</p> <p>11 now, I'm drawing a blank, and Ray's the</p> <p>12 brother-in-law.</p> <p>13 Q. The brother-in-law to whom?</p> <p>14 A. The Walsh family. He's married to</p> <p>15 one of the -- was a daughter of Frank Walsh.</p> <p>16 Q. Do you know which daughter?</p> <p>17 A. No, I don't.</p> <p>18 Q. If you continue, "This comes out to</p> <p>19 less than 1800 per unit. We argued strongly</p> <p>20 against this and Ray said, talk to your partners</p> <p>21 and see what they want to do." Did you talk to</p> <p>22 your partners about walking away from the share</p> <p>23 of condemnation proceeds?</p> <p>24 A. Yes.</p> <p>25 Q. With whom did you discuss releasing</p>
<p>Gans, Daniel - direct - Ash Page 222</p> <p>1 "going to see Bruce over the weekend and ask if</p> <p>2 we would write a little memo to him to go over</p> <p>3 the points that were bothering Bruce about our</p> <p>4 performance, and we wrote that memo." That's at</p> <p>5 Page 80, Lines 1 through 4.</p> <p>6 So did you prepare a memo at Mr.</p> <p>7 Ackman's suggestion?</p> <p>8 A. At his suggestion we did, yes.</p> <p>9 Q. Is that the memo we've marked DG-19?</p> <p>10 A. Yes.</p> <p>11 Q. Does that also include DG-20?</p> <p>12 A. I believe DG-20 was written after</p> <p>13 they had met.</p> <p>14 Q. Do you know if Bruce Menin and Bill</p> <p>15 Ackman reviewed DG-19 when they met?</p> <p>16 A. I do not.</p> <p>17 Q. Did Ackman, did Bill Ackman ever</p> <p>18 discuss the content of DG-19, DG-20 with you?</p> <p>19 A. No.</p> <p>20 MR. ASH: DG-21, please.</p> <p>21 (Exhibit DG-21 was received and</p> <p>22 marked for identification by the court reporter.)</p> <p>23 Q. At the top of DG-21 this is an</p> <p>24 e-mail from you to George Vallone, cc Bruce</p> <p>25 Menin, sent Sunday, June 30, 2013 at 4:37 p.m.</p>	<p>Gans, Daniel - direct - Ash Page 224</p> <p>1 the condemnation proceeds of \$1,792,000?</p> <p>2 A. I don't think I had the conversation</p> <p>3 personally, no, I did not discuss that with them,</p> <p>4 with Bruce or Sonny.</p> <p>5 Q. Who had that conversation?</p> <p>6 A. Mr. Vallone.</p> <p>7 Q. Do you know what was discussed?</p> <p>8 A. I believe that was discussed and the</p> <p>9 compensation and walking away from the proceeds.</p> <p>10 Q. What was the outcome of that</p> <p>11 discussion?</p> <p>12 A. The outcome of that discussion was,</p> <p>13 it's been told to me by my partner, so it's his,</p> <p>14 what I heard. He told me that this was not taken</p> <p>15 well by Sonny, and I think he and Sonny had some</p> <p>16 words and the deal fell apart.</p> <p>17 Q. Do you see at the bottom of this</p> <p>18 e-mail there's a bates stamp, "Ackman 15," do you</p> <p>19 see that?</p> <p>20 A. I do.</p> <p>21 Q. I'll represent to you that this</p> <p>22 document was produced from Mr. Ackman's personal</p> <p>23 file. Do you know how he would have received a</p> <p>24 copy of this e-mail?</p> <p>25 A. We must have cc'd him, copied him on</p>

<p>Gans, Daniel - direct - Ash Page 225</p> <p>1 the e-mail.</p> <p>2 Q. Do you know if you blind copied him</p> <p>3 on e-mail over the period between June 28th and</p> <p>4 July 1st, 2013?</p> <p>5 A. We may have, yes.</p> <p>6 Q. Do you specifically recall blind</p> <p>7 copying Bill Ackman on e-mails between June 29th,</p> <p>8 2013 and July 1st, 2013?</p> <p>9 A. I don't specifically recall that</p> <p>10 exactly that we did, but we must have if he had</p> <p>11 this in his files.</p> <p>12 Q. Was it at this point on June 30th,</p> <p>13 2013 where the deal between Ogden to sell the</p> <p>14 property and Hoboken Brownstone if it were to be</p> <p>15 reinstated, a material term of that deal would</p> <p>16 change and condemnation proceeds would be</p> <p>17 released?</p> <p>18 A. That is correct.</p> <p>19 Q. So when do you recall hearing from</p> <p>20 Ray on June 30th, 2013?</p> <p>21 A. George was the one who was talking</p> <p>22 with Ray, so I don't know the time frames.</p> <p>23 Q. Do you know if it was a phone call</p> <p>24 or an e-mail from Ray?</p> <p>25 A. To the best of my knowledge, it was</p>	<p>Gans, Daniel - direct - Ash Page 227</p> <p>1 value of that property in the settlement</p> <p>2 agreement was material, that was a material piece</p> <p>3 of the settlement agreement. So to the value was</p> <p>4 a value that I believe Texas Eastern started</p> <p>5 with.</p> <p>6 Q. Regardless of who allocated that</p> <p>7 amount of \$255,000, it was your understanding</p> <p>8 that the release of the entire allocation of</p> <p>9 \$1,792,394 included compensation for the .077</p> <p>10 acre permanent easement, additional permanent</p> <p>11 easement on Lot 7, Block 6005?</p> <p>12 A. Yes, that's correct.</p> <p>13 MR. ASH: Let's mark this DG-22,</p> <p>14 please.</p> <p>15 (Exhibit DG-22 was received and</p> <p>16 marked for identification by the court reporter.)</p> <p>17 Q. DG-22 is an e-mail from you to Bruce</p> <p>18 Menin copied George Vallone, Sunday, June 30th,</p> <p>19 2013, at 6:23 p.m. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. You write: "Hi, Bruce, see e-mail</p> <p>22 below from our attorney and the one below that</p> <p>23 from the title company, sounds like positive</p> <p>24 news. We suggest having a conference call this</p> <p>25 evening to discuss the condemnation proceeds</p>
<p>Gans, Daniel - direct - Ash Page 226</p> <p>1 a phone call.</p> <p>2 Q. So when you say in this e-mail on</p> <p>3 June 30th at 4:37 p.m., "We just heard back from</p> <p>4 Ray," you're referring to yourself and Mr.</p> <p>5 Vallone?</p> <p>6 A. That's correct.</p> <p>7 Q. And to the best of your</p> <p>8 recollection, this e-mail that you sent would</p> <p>9 have been contemporaneous with receiving that</p> <p>10 phone call from Ray?</p> <p>11 A. Shortly thereafter, yes.</p> <p>12 Q. And that was the first time that the</p> <p>13 issue of release in condemnation proceeds was</p> <p>14 raised if he were to reinstate the purchase from</p> <p>15 Ogden Realty?</p> <p>16 A. To the best of my knowledge, yes.</p> <p>17 Q. And you understood that walking away</p> <p>18 from your share of the condemnation proceeds was</p> <p>19 releasing any right to \$1,792,394?</p> <p>20 A. That's correct.</p> <p>21 Q. And you also understood that</p> <p>22 \$255,000 of that \$1,792,394 was compensation for</p> <p>23 the .077 acre permanent easement on the portion</p> <p>24 of Lot 7, Block 6005?</p> <p>25 A. I think I stated before that the</p>	<p>Gans, Daniel - direct - Ash Page 228</p> <p>1 issue that Ogden put on the table, parenthesis,</p> <p>2 that we forfeit for \$1,792,394, end parenthesis,</p> <p>3 so we are prepared to move forward tomorrow</p> <p>4 morning."</p> <p>5 Did you have a conference call on</p> <p>6 the evening of June 30th, 2013?</p> <p>7 A. I don't recall that.</p> <p>8 Q. Do you recall blind copying Bill</p> <p>9 Ackman on this e-mail?</p> <p>10 A. I don't recall that either.</p> <p>11 Q. You see the bates stamp number at</p> <p>12 the bottom --</p> <p>13 A. Yes --</p> <p>14 Q. -- of the page?</p> <p>15 A. -- I do.</p> <p>16 Q. Do you know how Bill Ackman would</p> <p>17 have received a copy of this e-mail?</p> <p>18 A. He must have been blind copied on</p> <p>19 it.</p> <p>20 Q. Do you know if at some point after</p> <p>21 June 30th, 2013 you would have provided</p> <p>22 correspondence to Bill Ackman?</p> <p>23 A. Rephrase that question again.</p> <p>24 MR. ASH: Can I have that back,</p> <p>25 please?</p>

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1 (Record read back.)
2 A. After June 30th, 2013, I would have
3 supplied Bill Ackman with documents. I don't
4 know which one or what documents, but certainly I
5 would have supplied him with documents.
6 Q. To the best of your recollection,
7 Bill Ackman would have come into possession of
8 this e-mail that we've marked DG-22 because you
9 blind copied him at the time?
10 A. I don't recall exactly how he
11 received this, but it's certainly a possibility
12 that we blind copied him.
13 Q. Is it your custom and practice to
14 blind copy certain individuals on e-mails from
15 time to time?
16 A. From time to time.
17 MR. ASH: DG-23, please.
18 (Exhibit DG-23 was received and
19 marked for identification by the court reporter.)
20 Q. Are you familiar with this document,
21 DG-23?
22 A. Yes, I am.
23 Q. And how would you describe this
24 document?
25 A. It's a briefing memo regarding the

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1 or document that would have further discussed
2 terms of a deal between Ogden Realty and Hoboken
3 Brownstone?
4 A. I don't believe so.
5 Q. There's no mention in this document,
6 DG-23, about the Texas Eastern easements on the
7 property. Is that right?
8 A. That's correct.
9 Q. There's no mention in DG-23 as to
10 the settlement of the Texas Eastern condemnation
11 of permanent and temporary easements on
12 properties. Is that right?
13 A. That's right.
14 Q. Was that information not included as
15 part of the terms of the deal to be reinstated
16 between Ogden Realty and Hoboken Brownstone?
17 A. Because the seller had indicated
18 that that was off the table if a new deal was
19 going to go forward.
20 Q. Was it ever expressed by you from
21 Mr. Vallone to Larry Ackman or William Ackman,
22 Mr. Lyss or any other representative of the
23 Ackmans or their development entities that the
24 proceeds of the Texas Eastern condemnation
25 settlement that would have been available as a

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1 Coles Street properties.
2 Q. Did you prepare this document?
3 A. Yes, along with Mr. Vallone.
4 Q. And why did you prepare this
5 document?
6 A. To see if we could get them involved
7 in purchasing the property.
8 Q. When you say, "them," that refers to
9 William Ackman and Larry Ackman?
10 A. Yes.
11 Q. Do you recall when you would have
12 transmitted this document to Larry Ackman and
13 William Ackman?
14 A. I believe on the 1st, July 1st.
15 Q. Did you e-mail the document, did you
16 hand it to them?
17 A. I believe it would have been
18 e-mailed and maybe handed also.
19 Q. This document was produced as DG 390
20 through 397 as a "Memorandum from Gans to Ackman
21 outlining terms of agreement with Ogden Realty
22 and development of property." Is that an
23 accurate characterization of this document?
24 A. Yes, it is.
25 Q. Was there an additional memorandum

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1 credit at closing to Crescent Heights was no
2 longer available in a deal going forward?
3 A. Not to my recollection specifically
4 at this time that this was brought up.
5 Q. If we turn to the page marked DG
6 396, we've got a, basically, a concept plan for
7 development, right?
8 A. Correct.
9 Q. Do you see -- I'm going to show you
10 my copy because it's in color. Do you see the
11 green area that's marked "railroad easement
12 park"?
13 A. Yes.
14 Q. What does that refer to?
15 A. That refers to New Jersey Transit
16 property that is funded and will become open
17 space.
18 Q. And that's, is that contiguous with
19 the Conrail freight line identified on this
20 concept?
21 A. Yes, and also the other green
22 portions.
23 Q. So, to your understanding, that park
24 on the New Jersey Transit owned property is, is
25 that something that is coming to fruition?

<p>Gans, Daniel - direct - Ash Page 233</p> <p>1 A. Yes.</p> <p>2 MR. ASH: Let's mark this DG-24,</p> <p>3 please.</p> <p>4 (Exhibit DG-24 was received and</p> <p>5 marked for identification by the court reporter.)</p> <p>6 Q. DG-24, we have an e-mail from you to</p> <p>7 Bruce Menin and Steve Goldman Monday, July 1st,</p> <p>8 2013 at 9:10 a.m. Who is Steve Goldman?</p> <p>9 A. Steve Goldman was Bruce Menin's</p> <p>10 attorney.</p> <p>11 Q. Who is Daisy Torres?</p> <p>12 A. She worked for Crescent Heights.</p> <p>13 Q. As of Monday, July 1st, 2013, you're</p> <p>14 still trying to convince Bruce Menin to come back</p> <p>15 and close on the property?</p> <p>16 A. It appears from this that, yes, I'm</p> <p>17 still working with them. So my recollection of</p> <p>18 dates is a little tough at the time.</p> <p>19 Q. Did you ever have a conversation</p> <p>20 with Menin and Ackman together?</p> <p>21 A. No.</p> <p>22 Q. Do you know if Menin and Ackman ever</p> <p>23 talked directly?</p> <p>24 A. I believe they did.</p> <p>25 Q. They met at Mr. Ackman's house for a</p>	<p>Gans, Daniel - direct - Ash Page 235</p> <p>1 A. They didn't, they didn't report back</p> <p>2 to me about that.</p> <p>3 Q. Okay. Now, back to DG-24, I see my</p> <p>4 name there, right?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall you reached out to me</p> <p>7 by phone on the morning of July 1st, 2013?</p> <p>8 A. I don't recall the conversation,</p> <p>9 but.</p> <p>10 Q. There was specific information you</p> <p>11 were looking for, right?</p> <p>12 A. Yes.</p> <p>13 Q. You wanted Texas Eastern's title</p> <p>14 research with regard to the ownership of what we</p> <p>15 had identified as parcel X, right?</p> <p>16 A. That's correct.</p> <p>17 Q. And you understand parcel X to be</p> <p>18 the .077 acre portion of Lot 7, Block 6005?</p> <p>19 A. Yes, I do.</p> <p>20 Q. And we go to page Ackman 23, there's</p> <p>21 an e-mail from me to you, cc Bill Simmons on July</p> <p>22 1st, 2013, in which I attached a memo as to the</p> <p>23 ownership of Lot 7, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. You then forwarded that information</p>
<p>Gans, Daniel - direct - Ash Page 234</p> <p>1 barbecue?</p> <p>2 A. I believe that's correct, yes.</p> <p>3 Q. Did Mr. Menin or Mr. Ackman ever</p> <p>4 relate back to you what was discussed at that</p> <p>5 barbecue?</p> <p>6 A. Not to me, no.</p> <p>7 Q. To Mr. Vallone?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you know if they -- strike that.</p> <p>10 Do you know if Menin and Ackman had</p> <p>11 any additional conversations besides when they</p> <p>12 met at Mr. Ackman's house for a barbecue on July</p> <p>13 29th -- strike that, June 29th, 2013?</p> <p>14 A. I believe they had a conversation on</p> <p>15 Friday evening when they didn't close. I don't</p> <p>16 remember the dates right now.</p> <p>17 Q. Did either Mr. Menin or Mr. Ackman</p> <p>18 relate back to you what was discussed between Mr.</p> <p>19 Menin and Mr. Ackman directly on June 28th, 2013?</p> <p>20 A. It was not related to me.</p> <p>21 Q. What wasn't related to you -- I'm</p> <p>22 sorry, they never --</p> <p>23 A. The conversation between Bill Ackman</p> <p>24 and Bruce Menin was not related.</p> <p>25 Q. They didn't report back?</p>	<p>Gans, Daniel - direct - Ash Page 236</p> <p>1 to your title company, right?</p> <p>2 A. Yes.</p> <p>3 Q. They forward that information to</p> <p>4 their underwriter, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And then at some point the title</p> <p>7 company reaches a conclusion consistent with the</p> <p>8 analysis in the memo I provided to you as to the</p> <p>9 ownership of Lot 7, right?</p> <p>10 A. That's correct.</p> <p>11 Q. Was there any additional research</p> <p>12 that was conducted by either your attorneys, any</p> <p>13 of the parties or the title company above and</p> <p>14 beyond the memo I provided to you as to the</p> <p>15 ownership of Lot 7?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you know if your title company</p> <p>18 had relied exclusively on the memo I provided to</p> <p>19 you and the research in that memo as to the title</p> <p>20 of Lot 7 in your title company concluding to the</p> <p>21 ownership of Lot 7?</p> <p>22 A. I believe they had other information</p> <p>23 and in the e-mail, your e-mail, certainly was in</p> <p>24 addition to the information they already had,</p> <p>25 which helped them understand and be comfortable</p>

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1 with the ownership. It wasn't -- I wouldn't say
2 it was based solely upon one e-mail.
3 Q. To the best of your recollection,
4 what was the additional information in the
5 possession of the title company as to the
6 ownership of Lot 7?
7 A. I don't know, but I do recall they
8 had questions. It was open, so there was
9 conflicting issues that they had, so there was
10 other issues. There was other documents that
11 they were looking at.
12 Q. However, my memo seemed to have
13 provided some closure on the issue, right?
14 A. It seemed to give them final, the
15 final conclusion.
16 Q. The transmittal of that memo from me
17 included a specific reservation that we were
18 sharing that information, but not to be relied
19 upon conclusively, correct?
20 A. That is correct.
21 Q. And that was your understanding?
22 A. That was my understanding 100
23 percent.
24 Q. On page Ackman 22 at the top there's
25 an e-mail from George Vallone to Bill Ackman,

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1 exactly his -- what he knew and what he was
2 reading and how much time he was putting into his
3 effort in looking into all this. I have some
4 reservations about how much he focuses on
5 different issues.
6 MR. ASH: DG-25, please.
7 (Exhibit DG-25 was received and
8 marked for identification by the court reporter.)
9 Q. Okay. On July 1st, 2013, you had a
10 meeting in person with Greg Lyss, Larry Ackman
11 and George Vallone?
12 A. That's correct.
13 MR. DALTON: Larry or Bill?
14 MR. ASH: Larry.
15 MR. DALTON: Okay.
16 Q. Where was that meeting?
17 A. I can't remember where the meeting
18 was that afternoon.
19 Q. Do you remember attending a meeting?
20 A. I remember having dinner with Larry
21 I believe that day and maybe we met right before
22 dinner. I don't recall.
23 Q. It's possible "meeting" means
24 dinner?
25 A. I don't remember Greg being there,

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1 Monday, July 1st, 2013 at 10:30 a.m., "Keeping
2 Bill in the loop." It says, "As we suspected it
3 was all a mistake and Walsh does in fact own the
4 3,300 square foot Lot 7. We have not heard
5 anything directly from CH about Walsh's demand
6 for more money." In this e-mail, "CH," refers to
7 Crescent Heights?
8 A. Yes.
9 Q. And "Walsh's demand for more money,"
10 does that refer to the release or relinquishment
11 of \$1,792,394 of condemnation proceeds?
12 A. That's correct.
13 Q. And, again, the release of the
14 condemnation proceeds would include compensation
15 for a permanent easement on the 3,300 square foot
16 portion of Lot 7, correct?
17 A. Correct.
18 Q. So you would agree that if not
19 before, since Mr. Ackman had been in the loop, if
20 not before July 1st, 2013 at 10:30 a.m., he was
21 now aware that Ogden, also referred to as Walsh,
22 wanted to keep \$1,792,394 of condemnation
23 proceeds to reinstate the deal, right?
24 A. He definitely had the information
25 regarding that at that time. I don't know what

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1 so it's -- in rereading this, he was at a
2 meeting. Maybe we met before dinner. I don't
3 recall.
4 Q. Mr. Lyss indicates he attended the
5 first hour of a meeting, right?
6 A. Yes.
7 Q. So do you recall meeting at an
8 office somewhere and then going to dinner with
9 Larry Ackman?
10 A. I don't remember.
11 Q. Do you remember where you ate with
12 Larry Ackman?
13 A. I don't remember.
14 Q. Do you recall then going to Bill
15 Ackman's apartment?
16 A. Yes.
17 Q. Now, focusing on the meeting of the
18 afternoon in which Mr. Lyss attended, do you
19 recall who was present at that meeting?
20 A. It would have been myself, Mr.
21 Vallone and Larry Ackman.
22 Q. Does Larry Ackman maintain an
23 office?
24 A. It's at Larry Square office.
25 Q. Do you recall if that's where you

<p>Gans, Daniel - direct - Ash Page 241</p> <p>1 met on July 1st, 2013?</p> <p>2 A. I don't know.</p> <p>3 Q. Do you recall what was discussed on</p> <p>4 July 1st, 2013 with Larry Ackman and Mr. Lyss?</p> <p>5 A. We would have discussed the</p> <p>6 development project.</p> <p>7 Q. Was there any mention of Texas</p> <p>8 Eastern easements or settlement during those</p> <p>9 conversations?</p> <p>10 A. I don't recall.</p> <p>11 Q. Is it possible that was discussed?</p> <p>12 A. It's possible.</p> <p>13 Q. Did you discuss terms of a closing</p> <p>14 on the Ogden properties?</p> <p>15 A. Yes.</p> <p>16 Q. What were the terms discussed?</p> <p>17 A. It was an all cash deal with no</p> <p>18 contract.</p> <p>19 Q. And the consideration was \$22</p> <p>20 million?</p> <p>21 A. Yes.</p> <p>22 Q. And there would be no credit for</p> <p>23 condemnation proceeds?</p> <p>24 A. That's correct, no contract.</p> <p>25 Q. Was that specifically discussed,</p>	<p>Gans, Daniel - direct - Ash Page 243</p> <p>1 Q. Did Mr. Vallone join you?</p> <p>2 A. Yes, he did.</p> <p>3 Q. Anyone else?</p> <p>4 A. No.</p> <p>5 Q. After dinner you retired to Bill</p> <p>6 Ackman's apartment?</p> <p>7 A. Yes.</p> <p>8 Q. And Bill Ackman joined you?</p> <p>9 A. Yes.</p> <p>10 Q. That was at about 8:30 in the</p> <p>11 evening on July 1st, 2013?</p> <p>12 A. That's correct.</p> <p>13 Q. Who else attended the meeting in</p> <p>14 Bill Ackman's apartment?</p> <p>15 A. Greg Lyss.</p> <p>16 Q. Larry Ackman?</p> <p>17 A. Yes, Larry Ackman, Greg Lyss, Mr.</p> <p>18 Vallone and myself, Bill Ackman.</p> <p>19 Q. No one else?</p> <p>20 A. No one else.</p> <p>21 Q. How long did you meet at Bill</p> <p>22 Ackman's apartment?</p> <p>23 A. Maybe for an hour.</p> <p>24 Q. What was the mood like of the</p> <p>25 meeting?</p>
<p>Gans, Daniel - direct - Ash Page 242</p> <p>1 that there would be no credit for condemnation</p> <p>2 proceeds?</p> <p>3 A. I don't recall what was discussed,</p> <p>4 but it was not something that we would have</p> <p>5 focused on because it was not part -- it was no</p> <p>6 longer a part of the deal, so, we would not have</p> <p>7 focused on that.</p> <p>8 Q. What documents do you recall</p> <p>9 reviewing in that meeting in the afternoon of</p> <p>10 July 1st, 2013?</p> <p>11 A. I think we would have had our memo</p> <p>12 with us and very possibly that was all that we</p> <p>13 would have brought.</p> <p>14 Q. You would have brought your entire</p> <p>15 file for the project?</p> <p>16 A. No.</p> <p>17 Q. Just the memo?</p> <p>18 A. Just the memo.</p> <p>19 Q. That's the memo we've marked DG --</p> <p>20 MR. DALTON: 23.</p> <p>21 Q. -- 23?</p> <p>22 A. That's correct.</p> <p>23 Q. You then recall having dinner with</p> <p>24 Larry Ackman, but you don't recall where?</p> <p>25 A. That's correct.</p>	<p>Gans, Daniel - direct - Ash Page 244</p> <p>1 A. Relaxed, friendly.</p> <p>2 Q. Were there some cocktails served?</p> <p>3 A. No, no cocktails.</p> <p>4 Q. Larry Ackman was singing?</p> <p>5 A. You remind me of that. I don't know</p> <p>6 how, but you remind me of that. That Larry</p> <p>7 showed us what a good singer he was. We were</p> <p>8 very impressed by that. He had just performed to</p> <p>9 his family, so he was very proud of that.</p> <p>10 Q. What did he sing, do you recall?</p> <p>11 A. I don't -- Broadway show music,</p> <p>12 very, very talented. His wife's a piano player,</p> <p>13 I believe.</p> <p>14 Q. And what did you discuss at Bill</p> <p>15 Ackman's apartment?</p> <p>16 A. We discussed the Coles Street</p> <p>17 project.</p> <p>18 Q. What specifically did you discuss?</p> <p>19 A. That we thought it was a great</p> <p>20 value, that he should do it. Bill had looked at</p> <p>21 this property before only it had a near miss with</p> <p>22 him, what we call a "near miss." We tried to</p> <p>23 convince him again that this was a great value.</p> <p>24 Q. How did you try to convince him of</p> <p>25 the value of this project?</p>

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<p>Gans, Daniel - direct - Ash Page 245</p> <p>1 A. The price of the acquisition, the 2 value of the properties, the vicinity, what we 3 could get approved, our track record with Bill, 4 that's, I think generalizes the conversation. 5 Q. Did you discuss the material terms 6 of a deal with Ogden Realty if he were to pursue 7 acquisition of the Ogden Realty properties? 8 A. We discussed that there would be no 9 contract and that if he could close quick enough 10 they would sell us the property for \$22 million. 11 Q. Were the Texas Eastern easements 12 discussed at any point? 13 A. I don't believe so. 14 Q. How about the release of the 15 condemnation sale proceeds, was that discussed? 16 A. I don't believe so. 17 Q. Was Mr. Ackman aware that the 18 purchase of the Ogden Realty properties would be 19 subject to Texas Eastern easements for a natural 20 gas pipeline? 21 MR. DALTON: Objection to form. 22 MR. ASH: You can answer the 23 question. 24 A. I'm not -- I don't know what he knew 25 at that point regarding the Texas Eastern</p>	<p>Gans, Daniel - direct - Ash Page 247</p> <p>1 together? 2 A. Yes, we drove into the City 3 together. 4 Q. And you left the City together? 5 A. Yes, we did. 6 Q. Where did you go after you left Bill 7 Ackman's apartment? 8 A. Home. 9 Q. What did you discuss with Mr. 10 Vallone after the meeting at Bill Ackman's 11 apartment? 12 A. We debriefed on how the day went, 13 crossed our fingers and hoped that we'd get the 14 call, I'd get the call in the morning from Bill 15 and we'd be happy. 16 Q. Did you get the call in the morning 17 from Bill? 18 A. Yes, I did. 19 Q. What did he say? 20 A. Bill told me that his inclination 21 was not to do the deal. 22 Q. Let me show you DG-26. So this is 23 an e-mail from George Vallone to Anthony 24 Colletta, who is Mr. Ackman's attorney, and Bill 25 Ackman, and he copied you. This was sent Monday,</p>
<p>Gans, Daniel - direct - Ash Page 246</p> <p>1 properties. 2 Q. To your knowledge, it was never 3 discussed with Mr. Ackman? 4 A. Not specifically to my knowledge. 5 Q. Did you ever review a survey of the 6 Ogden properties with Mr. Ackman? 7 A. No. 8 (Exhibit DG-26 was received and 9 marked for identification by the court reporter.) 10 Q. How long did you meet at Mr. 11 Ackman's apartment? 12 A. Maybe for an hour. 13 Q. What was the outcome of the meeting? 14 A. Bill said he was unsure if he was 15 going to invest in this, in the property. He 16 would think about it and give a call in the 17 morning. 18 Q. Were there any follow-up items for 19 you or Mr. Vallone? 20 A. I don't recall if he asked us for 21 anything else. 22 Q. Did you and Mr. Vallone come 23 together? 24 A. I don't understand the question. 25 Q. Did you drive into the City</p>	<p>Gans, Daniel - direct - Ash Page 248</p> <p>1 July 1st, 2013, 6 p.m. So do you know if Mr. 2 Vallone went back to the office afterwards or he 3 went home? 4 A. I believe he went home. 5 Q. Do you see the subject is "Ogden 6 closing third info batch"? 7 A. Yes. 8 Q. Do you know if there were other 9 e-mails as part of a series of which this e-mail 10 was the third? 11 A. I don't recall. It appears that 12 way. 13 Q. Do you still have e-mail in your 14 Inbox going back to 2013? 15 A. I'd have to look for it. 16 MR. ASH: I would just ask to take a 17 look at Mr. Gans correspondence and see if there 18 are additional e-mails that are part of a series 19 that would include DG-26 as the third of a 20 series. 21 MR. DALTON: Sure. We'll take a 22 look. 23 Q. In this e-mail Mr. Vallone is 24 attaching a number of documents. The first is a 25 revised budget, right?</p>

<p>Gans, Daniel - direct - Ash Page 249</p> <p>1 A. Correct.</p> <p>2 Q. Do you know what was revised in this</p> <p>3 budget?</p> <p>4 A. No.</p> <p>5 Q. The second is a copy of a survey</p> <p>6 2013?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know if the attachments to</p> <p>9 this e-mail, this is information specifically</p> <p>10 requested by Bill Ackman, Larry Ackman or Greg</p> <p>11 Lyss or Anthony Colletta for that matter?</p> <p>12 A. Yes, I believe it would have been</p> <p>13 requested by one of them.</p> <p>14 Q. Do you know what other information</p> <p>15 was requested at this time?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you know if there were any</p> <p>18 questions from Mr. Ackman in regard to these</p> <p>19 attachments?</p> <p>20 A. I don't recall any specific</p> <p>21 questions.</p> <p>22 (Exhibit DG-27 was received and</p> <p>23 marked for identification by the court reporter.)</p> <p>24 Q. If you look at the middle of the</p> <p>25 page, the first page marked DG-27, George Vallone</p>	<p>Gans, Daniel - direct - Ash Page 251</p> <p>1 A. You know, my dates right now, I'm</p> <p>2 confused with what day the 1st was, Sunday,</p> <p>3 Monday.</p> <p>4 Q. There was a lot of action?</p> <p>5 A. There's a lot of action. We met</p> <p>6 Bill on what night, it was on the 1st?</p> <p>7 Q. Monday?</p> <p>8 A. Monday the 1st.</p> <p>9 Q. Right.</p> <p>10 THE WITNESS: Read the question</p> <p>11 back, please.</p> <p>12 (Record read back.)</p> <p>13 A. Yes, I see that, yes.</p> <p>14 Q. Is it your recollection that there</p> <p>15 was a closing on the Ogden Realty property on</p> <p>16 Tuesday, July 2nd at 1 p.m.?</p> <p>17 A. My recollection is that we did not</p> <p>18 close at 1 p.m. on July 2nd.</p> <p>19 Q. Was there anticipated to be a</p> <p>20 closing at 1 p.m. on July 2nd?</p> <p>21 A. It was our hope that there would be</p> <p>22 a closing at 1 p.m. on July 2nd.</p> <p>23 Q. And who was your partner on July 2nd</p> <p>24 at 1 p.m. at a scheduled closing, is it Crescent</p> <p>25 Heights or is it Bill Ackman?</p>
<p>Gans, Daniel - direct - Ash Page 250</p> <p>1 writes on July 1st, 2013 at 11:32 p.m., "Please</p> <p>2 send \$23 million. We need approximately 2.6</p> <p>3 million to close and rest to start the ball</p> <p>4 rolling. Thanks, Bill."</p> <p>5 Was this discussed in the evening of</p> <p>6 July 1st, 2013 that Bill Ackman would send you</p> <p>7 \$23 million?</p> <p>8 A. It was discussed that evening what</p> <p>9 would be required.</p> <p>10 Q. Was there a commitment by Bill</p> <p>11 Ackman to pursue the acquisition of the property</p> <p>12 and to send \$23 million for the acquisition of</p> <p>13 the Ogden property?</p> <p>14 A. No.</p> <p>15 Q. Do you know if there was any</p> <p>16 correspondence between 11:06 p.m. on July 1st,</p> <p>17 2013 and 11:32 p.m. on July 1st, 2013 from</p> <p>18 sending a budget to making a request for \$23</p> <p>19 million that would have indicated a commitment to</p> <p>20 acquiring the Ogden Realty property?</p> <p>21 A. No, I don't believe there was</p> <p>22 anything else.</p> <p>23 Q. The next morning you write at 7:42</p> <p>24 a.m. that you are scheduled to go to a closing at</p> <p>25 1 p.m., do you see that?</p>	<p>Gans, Daniel - direct - Ash Page 252</p> <p>1 A. Crescent Heights was out and our</p> <p>2 only hope was that Bill Ackman would opt in.</p> <p>3 (Exhibit DG-28 was received and</p> <p>4 marked for identification by the court reporter.)</p> <p>5 Q. DG-28 we have an e-mail at the</p> <p>6 bottom of the page from Bill Ackman to his</p> <p>7 attorney, Colletta, Monday, July 1st, 2013 at</p> <p>8 11:49 p.m., in which he writes: "After reviewing</p> <p>9 the facts, I am unlikely to participate, so I</p> <p>10 wanted to make sure your team did not spend any</p> <p>11 more time." Do you see that statement?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And do you see a response from Greg</p> <p>14 Lyss at the top of the page, "Bill, have you</p> <p>15 communicated this to George and Danny?" Do you</p> <p>16 see that?</p> <p>17 A. Yes.</p> <p>18 Q. Had that information that Bill</p> <p>19 Ackman would be unlikely to participate in the</p> <p>20 deal, had that been communicated to you as of 10</p> <p>21 a.m. on July 2nd, 2013?</p> <p>22 A. I spoke to Bill prior to 10:03 a.m.</p> <p>23 on July 2nd, and he communicated to me at the end</p> <p>24 of that call that he was still open to</p> <p>25 investigating financing us or becoming our</p>

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<p>Gans, Daniel - direct - Ash Page 253</p> <p>1 partner or purchasing the property. So he had 2 not communicated to us that the deal was over at 3 10:03 a.m. on Tuesday. 4 Q. He says the night before, "after 5 reviewing the facts," do you see that? 6 A. Yes. 7 Q. Did he discuss with you on the 8 morning of July 2nd what facts he was considering 9 that created his unlikely participation in the 10 deal? 11 A. Yes. 12 Q. What were the concerns Bill Ackman 13 had as of July 2nd, 2013 about acquiring the 14 Ogden Realty properties? 15 A. He had concerns about getting 16 involved in a land deal and the time frames that 17 it takes. 18 Q. Did he have any specific concerns 19 about this particular land deal from Ogden 20 Realty? 21 A. I think the location was a concern. 22 Q. Anything else? 23 A. No, I don't recall anything else at 24 the moment. 25 Q. Was Bill Ackman concerned about a</p>	<p>Gans, Daniel - direct - Ash Page 254</p> <p>1 like to put forward if he gave me the time. 2 When he got back on the phone with me 3 he told me he talked to his Dad, it was his Dad 4 on the other line, and that his father, Larry, 5 felt that he should do the deal and that the 6 acquisition price was good; and he told me that 7 he wasn't going to say that he was going to do 8 the deal at that point, he would make some phone 9 calls. 10 One of the phone calls he said he 11 would make was to our previous partners who we 12 sold a large portion of the Maxwell House 13 development to, which was Toll Brothers, and he 14 was going to make some other phone calls and that 15 he would get back to me. 16 George is, as it said here in some of 17 these e-mails, was that morning flying down to 18 St. Thomas, and when he landed he called me and 19 said, What's going on? I told him the whole 20 story. I said, "Give a call, it couldn't hurt, 21 to Bill." 22 He called Bill, they chatted and Bill 23 had already talked to Doug at Toll Brothers, Doug 24 Yearly at Toll Brothers and said, Look, I'll do 25 the deal, and that was probably -- I don't know</p>
<p>Gans, Daniel - direct - Ash Page 254</p> <p>1 Texas Eastern natural gas pipeline running 2 through the Ogden Realty property? 3 A. Not to my knowledge. 4 Q. The deal closed on July 3rd, 5 correct? 6 A. That's correct. 7 Q. What was discussed between you, Mr. 8 Vallone, Mr. Ackman, Bill Ackman, Larry Ackman or 9 Greg Lyss that changed Bill Ackman's mind between 10 July 2nd and July 3rd? 11 A. Bill called me maybe 20 minutes, 12 half an hour, 45 minutes after my e-mail that 13 morning to him. As I mentioned, he told me that 14 he was inclined not to do the deal. Bill was 15 very generous with his time, and let me try to 16 convince him that he was going to lose an 17 opportunity; and we talked about that for four, 18 five minutes and I wasn't changing his mind in 19 that time frame, and though he was listening and 20 I appreciated that; and then he told me, Hold on, 21 I have another call coming in I have to take. 22 And I waited on the line for four, 23 five minutes, a long time to be on hold, 24 especially in this circumstance, and I'm thinking 25 of all the many types of arguments I would still</p>	<p>Gans, Daniel - direct - Ash Page 256</p> <p>1 if he told George right on that phone call or 2 said, look, I'll call you back another hour or 3 something, but somewhere within that time frame 4 on Tuesday afternoon he decided he would move 5 forward, and I would say the primary force was 6 his father's recommendation. 7 MR. ASH: DG-29. 8 (Exhibit DG-29 was received and 9 marked for identification by the court reporter.) 10 Q. We turn to page Ackman 175. There's 11 an e-mail from you Wednesday, July 3rd, 2013, 12 12:12 p.m. to Larry Ackman with cc's: "Hi, all. 13 Thank you for jumping through all the hoops to 14 make this deal happen. We just heard that the 15 title company has not yet seen the wire transfer. 16 I have signed for the liability insurance as 17 closing manager." Do you see that? 18 A. Yes. 19 Q. What does that mean? What document 20 did you sign? 21 A. Insurance certificate that would be 22 necessary to close, purchase the property. 23 Q. What does it mean to be the "closing 24 manager"? 25 A. I had been given the legal authority</p>

<p>255</p> <p>ict - Ash</p> <p>Page 257</p> <p>in agent of this entity. his included specific insurance 3 coverage. Is this for errors or omissions, as 4 you're A.S. in the role of a closing manager? 5 A. Liability insurance to me means on 6 the property. I don't know what else. When I 7 look at this right now liability insurance is 8 property liability. 9 Q. When you refer to yourself as 10 closing manager, you had actual legal authority 11 to sign all documents on behalf of Coles Jersey 12 Development Company, LLC at the closing, correct? 13 A. That's correct. 14 Q. I'm going to show you what we 15 previously marked as DG-5 on February 12, 2015? 16 A. Excuse me. 17 MR. DALTON: Do you want to take a 18 moment? 19 THE WITNESS: It happens. 20 MR. DALTON: It's Michael's 21 questioning. 22 MR. ASH: Need a minute, take a 23 drink. 24 THE WITNESS: Okay. We'll try. Go. 25 Q. DG-5, this is a release that you</p>	<p>Gans, Daniel - direct - Ash</p> <p>Page 259</p> <p>1 the deal? 2 A. Yes, I think it was material through 3 Ogden that we signed this release. 4 Q. That you sign the release as an 5 agent of the purchaser? 6 A. No, that I signed the release as the 7 Hoboken Brownstone Company. 8 Q. That's not a legal entity, correct? 9 A. I understood it as the dba of West 10 Bank Realty would sign the original contract. 11 Q. Do you recall after you closed, it 12 may have been September, October of 2013, I had 13 called you on the phone and asked for an easement 14 on the portion of Lot 7, the .077 acre portion of 15 Lot 7, Block 6005? 16 A. Yes, I do. 17 Q. Do you recall speaking on a number 18 of occasions? 19 A. Yes, I do. 20 Q. With whom did you discuss that 21 easement? 22 A. Mr. Vallone, Kevin O'Brien, our 23 attorney, Greg Lyss, Larry Ackman. 24 Q. Bill Ackman? 25 A. I don't think I would have. I don't</p>
<p>Gans, Daniel - direct - Ash</p> <p>Page 258</p> <p>1 signed at closing, correct? 2 A. Yes. 3 Q. It was a material term of the deal 4 between Ogden Realty and Coles Jersey Development 5 Company, LLC that there would be a release of all 6 condemnation proceeds, correct? 7 A. Now I can only speak to the document 8 that was what I signed. 9 Q. Was it your intention to sign a 10 release at closing as to any and all condemnation 11 proceeds for Ogden Realty from the \$3.5 million 12 settlement paid by Texas Eastern? 13 A. Yes, it was to waive any rights that 14 Hoboken Brownstone had on the contract. 15 Q. Was it also to release any interest 16 from the buyer of the property from Ogden Realty 17 as the condemnation proceeds? 18 A. I really can't speak on the 19 intention of others. 20 Q. It was your understanding, however, 21 that was a material term of the deal for Ogden to 22 reinstate the sale of the properties, right? 23 A. That's correct. 24 Q. Do you believe you signed this 25 release in accordance with that material term of</p>	<p>Gans, Daniel - direct - Ash</p> <p>Page 260</p> <p>1 know if I would have brought this directly to 2 Bill. 3 Q. Did you understand that request for 4 a permanent easement on the .077 acre portion of 5 Lot 7, Block 6005 to relate back to the 6 settlement between Texas Eastern and Ogden 7 Realty? 8 A. I was dumbfounded at the time that 9 this was an unresolved issue, as I thought it had 10 been resolved all before the closing. 11 Q. You say you thought it had been 12 resolved. It was your understanding that in 13 consideration for the \$3.5 million, a permanent 14 easement on the .077 acre portion of Lot 7, Block 15 6005 was granted? 16 A. Yes. 17 MR. ASH: Nothing further. 18 MR. DALTON: Nothing for me. 19 (Time noted at 12:51 p.m.) 20 21 22 23 24 25</p>

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C E R T I F I C A T E

I CERTIFY that the foregoing is a
true and accurate transcript of the testimony as
taken by and before me stenographically at the
time and place aforementioned.

I FURTHER CERTIFY that I am neither
attorney for nor counsel to any of the parties;
parties of any of the attorneys in this action;
and that I am not financially interested in the
outcome of this case.

RENEE RUSSO, CCR, CRCR, RPR, CRR
Certificate No. XI00143700

C E R T I F I C A T E

I CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken by and before me stenographically at the time and place aforementioned.

I FURTHER CERTIFY that I am neither attorney for nor counsel to any of the parties; parties of any of the attorneys in this action; and that I am not financially interested in the outcome of this case.

Rene Russo, CCR, CRCR, RPR, CRR

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Certificate No. XI00143700

